IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1964 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAHYABHAI SAVABHAI VADHER

Versus

STATE OF GUJARAT

Appearance:

MR PJ YAGNIK for Petitioner

MR ST MEHTA ASST.PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR HD CHUDASAMA for Respondent No. 4

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 04/08/2000

CAV JUDGEMENT

This is a Criminal Writ Petition under Art. 226 of the Constitution of India filed by the petitioner seeking a writ of mandamus or any other writ or an appropriate order directing the respondent nos. 1,2 and 3 to hold an inquiry/investigation in the case of Crime Registration No. M. Case No.6 of 1990 of Limbdi Police Station in Surendranagar District for which a final report dated 17-10-1991 under Sec.172(2) of the Criminal Procedure Code, 1973 (in short "Cr.P.C.") filed in the Court of the learned Judicial Magistrate, First Class, Limbdi (in short the learned Magistrate) by the respondent no.4.

2. The short facts leading to this present Special Criminal Writ Petition in a nutshell are as follows:-

The petitioner is a President in Limbdi Taluka Khadi Gramodyog Vanker Seva Sangh Limbdi (in short "Sangh"). That Sangh is registered under the Bombay Public Trusts Act, 1950, and it is also approved by Akhil Bharatiya Khadi Commissioner. Being a President of the Sangh, the petitioner is managing the business affairs of shop run by Sangh, and therefore, he is entitled to check and verify the books of account of that shop run by the Sangh.

It is the case of the petitioner that since the beginning of establishment of the Sangh, the respondent no.4 (who is an accused in Crime Registration No. M.Case No.6/90 of the Limbdi Police Station), is a Secretary and as Secretary he used to write, keep and maintain books of account of the Sangh. It is also his case that day-to-day sale proceeds of the articles sold and balance which remains at the closure of the day, remain with the respondent no.4. It is the case of the petitioner that respondent no.4 is duty bound to keep and maintain true and correct books of account and keep the cash balance of the Sangh with him, properly. It is the case of the petitioner that since two years before 8th November, 1990, the petitioner was directing the respondent no.4 to produce before him the books of account kept and maintained by him. The main contention of the petitioner is that the respondent no.4 is not giving any heed to the request made by the petitioner to produce the books of account and furnish the correct information with regard to cash balance. It is also the case of the petitioner that the respondent no.4 is also not furnishing the true and correct accounts of the stock of the goods kept in the shop of the Sangh. The Meetings of the trustees for inaction on the part of the respondent no.4 was canvened. The respondent no.4 was duty bound to attend said

Meetings to clarify his stand for not furnishing the books of account and correct information with regard to cash balance of the Sangh. In view of the facts stated hereinabove, the business of the Sangh is practically closed since about two years before 8th November, 1990 and the Sangh has sustained a loss to the tune of one lack rupees. Lastly a Meeting of the Trustees was called on 5th April, 1990, and a notice was served upon the respondent no.4 directing him to remain present in the Meeting. The respondent no.4 attended that Meeting, but he did not produce any books of account and furnish information regarding cash balance. It is further the case of the petitioner that because of such indifferent attitude of the respondent no.4, the trustees of the Sangh decided to relieve the respondent no.4 from service on and from 13th October, 1990. In short, it is the case of the petitioner that the respondent no.4 has mismanaged the business affairs of the shop which is being run by the Sangh. Therefore on 8th November, 1990, the complainant lodged a Private Complaint in the Court of the learned Judicial Magistrate, First Class, Limbdi against the respondent no.4 for the offences punishable under Secs. 406 and 420 of Indian Penal Code.

3. It appears from the annexures appended with the petition, the learned Judicial Magistrate, First Class, Limbdi passed an order directing the Police Inspector of Limbdi to investigate the case under Sec.156(3) of the Criminal Procedure Code, 1973. Pursuant to that order, the complaint of the petitioner came to be registered as C.R. No. M.Case 6/90 on 11th November, 1990.

3.1. The Police Sub Inspector, Limdi started to make investigation in the case for which a complaint was filed by the petitioner. During the pendency of the investigation, the respondent no.2 wrote a letter to the Assistant Public Prosecutor on 23rd May, 1991 stating inter alia, that no offence is committed by the respondent no.4. The learned Assistant Public Prosecutor gave his opinion to the effect that the facts do not constitute the offence, and therefore, he advised to file "C Summary".

3.2. Final report under Sec. 173(2) of Criminal Procedure Code in which a request was made to grant "C Summary" was placed before the learned Judicial Magistrate, First Class, Limdi on 17th October, 1991. It appears from Annexure E which is a copy of that report filed under Sec.173(2) of the Criminal Procedure Code, 1973, the learned Magistrate passed an order dt. 13th January, 1991 by which "C Summary " was ordered to be

granted as prayed for.

3.3 It is the main grievance of the petitioner that the learned Magistrate has granted "C Summary" without hearing the petitioner. It is the case of the petitioner that he is under bonafide belief that his complaint is still pending before the Police Officer for further investigation. He made somany requests to Police Officer to look into the matter of complaint, but no intimation or information has been given by the Police Officer to the complainant.

4. In view of the facts stated hereinabove, the petitioner has filed this present Special Criminal Writ Petition directing the respondent nos. 1 to 3 to hold a fresh inquiry/investigation in the matter and also to assist the respondent no.4.

5. It appears from the record that the respondent nos. 1 to 3, though they are represented by the learned APP have not filed any affidavit-in-reply. The respondent no.4 who is represented by the learned Advocate Shri H.D.Chudasama has also not filed affidavit-in-reply.

6. I have heard Shri P.J.Yagnik, learned Advocate for the petitioner, Shri S.T.Mehta, learned APP for the respondeat nos. 1 to 3 and Shri H.D.Chudasama, the learned advocate for the respondent no.4. I have gone through the documents Annexures A to J produced with this petition.

7. Shri P.J. Yagnik, the learned advocate for the petitioner has argued that the respondent no.3 who is a Police Sub Inspector of Limbdi Police Station, has not investigated the case properly in the manner in which it ought to have been investigated. He has further argued that the petitioner wrote letters to the respondent No.3 to seek his (petitioner) co-operation so that the petitioner can suggest the names of the witnesses whose statements under Secs. 161 and 162 of Criminal Procedure Code are required to be recorded by him. It is his grievance that the respondent no.3 did not care to contact the petitioner in the subject matter of the complaint lodged by the petitioner.

7.1 The petitioner has produced a copy of the complaint which he has lodged in the Court of the learned Judicial Magistrate, First Class, Limbdi at Annexure :A. Along with the complaint, one list of witnesses was also filed by the petitioner. According to that list, the

complainant has cited three witnesses (including himself). Annexure : B is a copy of the Police Statement of the petitioner recorded by the Investigating Officer on 6th November, 1990. The witness No.2 cited in the list is Khushalbhai Nathabhai and witness No.3 is Chavda Punjabhai Rajabhai. The Police Officer has recorded Police statements of these two witnesses on 16th November, 1990, and therefore, it cannot be said that the Police Officer has not recorded the statements of the witnesses whom he wanted to examine. It appears from the main petition that the grievance of the petitioner is to the effect that the respondent no.3 has carried out investigation without consulting the petitioner. It is well-settled principles of law that the Police Officer who acts as an Investigating Officer cannot be directed by anybody, even by the court, to investigate the case in a particular manner. It is also well-settled principles of law that no authority, including the Court, can interfere with the investigation which is being conducted by the Police Officer, and therefore, the grievance of the petitioner that the investigation has been carried out without his consultation, is devoid of merits.

8. It is also one of the contentions of the petitioner that the respondent no.3, before filing a report under Sec. 173(2) of Criminal Procedure Code, did not give any opportunity of being heard to the petitioner. Shri S.T.Mehta, the learned APP for the respondent nos.1 to 3 has drawn an attention of this court to Annexure : E which is a copy of Final Report filed by the respondent no.3 seeking " C Summary ". It is mentioned in this report that he had communicated the action taken by him to the petitioner as per Sec.173(2)(ii) of the Criminal Procedure Code, 1973. The petitioner has not denied the fact that he was communicated by the respondent no.3 before the respondent no.3 filed his Final Report in the Court of the learned Judicial Magistrate, First Class, Limbdi.

9. Shri P.J.Yagnik has vehemently argued that the learned Judicial Magistrate, First Class, Limbdi, who granted " C Summary " as per order passed below Final Report (Annexure : E) on 13th January, 1991 without affording any opportunity of being heard to the petitioner, because the petitioner being a complainant was required to be heard for his case. From Annexure : F, it clearly reveals that the learned Judicial Magistrate, First Class straightway has passed the order of granting " C Summary " without assigning any single reason worth name. There is no recital to the effect that before passing the aforesaid order of granting "C

Summary", the complainant was heard. It also appears that neither the complainant nor the accused was heard by the learned Judicial Magistrate, First Class, Limbdi before he passed an order granting "C " Summary.

10. Shri H.D.Chudasama, the learned advocate for the respondent no.4 has argued that this writ petition is not maintainable, because the petitioner is entitled to have an efficacious and alternative remedy by preferring criminal revision application under Sec. 397 of Criminal Procedure Code by challenging the order dt. 13th January, 1991 granting "C Summary " by the learned Judicial Magistrate, First Class, Limbdi. He has vehemently argued that when the petitioner is entitled to have efficacious and alternative remedy, by preferring Criminal Revision Application, this writ petition is not maintainable and no relief can be granted by this court under writ jurisdiction.

11. It is an admitted fact that the learned Judicial Magistrate, First Class, Limbdi passed an order on 13th January, 1991 granting "C Summary " without hearing the parties. He has also not assigned any reasons whatsoever for granting " C Summary ", and therefore, principles of natural justice are violated by him, and thus the order dt. 13th January, 1991 granting " C Summary" cannot be said to be legal order. When this court has come to know that the learned Judicial Magistrate, First Class has violated the principles of natural justice, this Court is of the view that this is a fit case in which this court should interfere by exercising writ jurisdiction. After arguments were practically over, the learned advocates for both the parties have unanimously submitted to this court that purpose would be served, if the order dt. 13th January, 1991 below Final Report under Sec.173(2) of Criminal Procedure Code is set aside by this court with a direction to the learned Judicial Magistrate, First Class, Limbdi to hear all the concerned parties on that report and by affording full opportunity of being heard to them and then, pass a judicial order by passing a reasoned order.

12. Having heard the learned advocates for both the parties and after examining the documents produced in the main petition, this court is of the view that this writ petition deserves to be allowed by quashing the order dt. 13th January, 1991 passed by the learned Judicial Magistrate, First Class, Limdi below the Final Report under Sec. 173(2) of the Criminal Procedure Code, 1973 filed in Crime Registration No. M.Case 6/90 of the Limbdi Police Station. This court is also of the opinion

that the learned Judicial Magistrate, First Class, Limbdi is required to give some directions in the subject matter.

13. In view of what is stated hereinabove, this writ petition deserves to be allowed and accordi allowed. The order dt. 13th January, 1991 granting "C Summary " by the learned Judicial Magistrate, First Class, Limbi in the matter of Crime Registration No. M.Case 6/90 of Limdi Police Station is set aside with a direction to rehear the Final Report under Sec.173(2) filed by the respondent no.3 on or about 17th October, 1991, afresh and pass a judicial order giving reasons after affording full opportunity of being heard to all the concerned parties including the complainant, within three months from receipt of this order. Rule is made absolute accordingly.

Office is direct to send a copy of this order to the learned Judicial Magistrate, First Class, Limbdi forth with.

Date: 04/08/2000. (H.H.MEHTA, J.)
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